

Southern Pacific Transportation Company

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3-234A024

RECORDATION NO. 8947-A Filed 1983

AUG 22 1983 10 20 AM

INTERSTATE COMMERCE COMMISSION

August 18, 1983

Ms. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
Twelfth Street & Constitution Avenue
Washington, D.C. 20423

No. _____
Date AUG 22 1983
Fee \$ 50.00
ICC Washington, D.C.

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I.C.C.
FEE OPERATION BR.

RE: ICC Finance Docket No. 28508 --
Southern Pacific Transportation Company
Equipment Trust Agreement, Series No. 69

Dear Ms. Mergenovich:

There are enclosed for recording, pursuant to the provisions of Title 49, United States Code, Section 11303, four (4) counterparts of Equipment Lease dated as of July 1, 1983, to Equipment Trust Agreement, Series No. 69, dated as of July 1, 1977, creating Southern Pacific Transportation Company Equipment Trust, Series No. 69, together with voucher in payment of the recording fee.

The following document has been recorded with the Commission under Section 11303 in this matter:

Equipment Trust Agreement dated as of July 1, 1977, recorded on August 26, 1977, at 2:15 PM, assigned Recordation No. 8947.

In connection with the recording of the Equipment Lease dated as of July 1, 1983, the following information is set forth in accordance with the provisions of Section 57.4 of the Commission's Order of July 28, 1952, as amended:

Name and Address of Trustee - Lessor:

First Pennsylvania Bank, N.A.
Fifteenth and Chestnut Streets
Philadelphia, Pennsylvania 19101

Handwritten signature: Cheryl B. Gurd

Ms. Agatha L. Mergenovich
Page Two
August 18, 1983

Name and Address of Guarantor - Lessee:

Southern Pacific Transportation Company
Southern Pacific Building
One Market Plaza
San Francisco, CA 94105

General Description of the Equipment
Covered by Equipment Lease:

51 100-ton, coil steel gondolas; PACCAR,
Inc., builder; lettered SP and
numbered 323000-323089.

When the recording of the Equipment Lease to Equipment Trust Agreement has been completed, will you kindly endorse, with the pertinent recording information, all certified counterparts thereof which are presented to you by our representative herewith, and return three (3) of the same to her.

Very truly yours,

Madeleine E. Sloane
Madeleine E. Sloane *ly*

Enclosures

cc: Mr. Robert J. McLean
(Attn: Mr. L. S. Vollmer)
Mr. J. J. Trabucco
Mr. J. K. Wyma

JUL 22 1983 10 20 AM

C.D. No. 53295-2

INTERSTATE COMMERCE COMMISSION

EQUIPMENT LEASE

1st day of July, 1983, by and between SOUTHERN PACIFIC TRANSPORTATION COMPANY, a corporation of the State of Delaware (hereinafter the Lessor), and UNION PACIFIC RAILROAD COMPANY, a corporation of the State of Utah (hereinafter the Lessee), WITNESSETH:

RECITALS:

The Lessee desires to lease the equipment (hereinafter the Equipment) belonging to the Lessor identified on Exhibit A, hereto attached, for the purpose and at the location indicated on Exhibit A.

With respect to certain units of the Equipment, Lessor has entered into a certain Equipment Trust Agreement with First Pennsylvania Bank, N.A., as Trustee, identified as Series 69 and dated as of July 1, 1977 (hereinafter referred to as "Trust Agreement"). Lessor has covenanted pursuant to Section 4.08 of the Trust Agreement that it shall not without the written consent of the Trustee first had and obtained, assign or transfer its rights thereunder, or transfer or sublet the trust equipment or any part thereof.

Upon receipt of such consent and in consideration of the mutual promises, covenants and agreements hereinafter set forth and the rentals to be paid by Lessee, the Lessor hereby agrees to sublease said Equipment to Lessee and the Lessee hereby agrees to sublease said Equipment from the Lessor upon the following terms and conditions.

AGREEMENT:

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

Section 1. Subordination

Lessee acknowledges that it is in receipt of the above-mentioned Trust Agreement and Lessee agrees, that in accordance with Section 4.08 of said Trust Agreement, this Equipment Lease by and between the Lessor and Lessee shall be made expressly subject and subordinate to all of the provisions of said Trust Agreement and the rights and remedies of the Trustee thereunder.

Section 2. TERM; PURPOSE; LOCATION.

The Lessor hereby leases to the Lessee "AS IS" the Equipment for the purpose indicated on Exhibit A for a term commencing as to each unit of Equipment leased hereunder, on the date of delivery of such item by the Lessor to the Lessee at the interchange point indicated on Exhibit A (hereinafter the Interchange Point), and continuing to the date of return of the Equipment to the Lessor at the Interchange Point; PROVIDED, however, that this Lease shall in any event expire by limitation on the expiration date indicated on Exhibit A. Lessor shall use all reasonable efforts to deliver the equipment to Lessee at interchange points on or before July 1, 1983.

It is expressly understood that the Equipment will be used by the Lessee at the location and for the purpose indicated on Exhibit A and will be used only in such manner as will not render the Equipment unfit for handling the commodities generally transported therein by the Lessor.

Section 3. RENTAL.

For the use of the Equipment, the Lessee shall pay to the Lessor rental at the rate indicated on Exhibit A.

Rental on each unit of Equipment shall commence on the date of delivery of such unit of Equipment by the Lessor to the Lessee at the Interchange Point, and shall continue until such unit of Equipment is returned to the Lessor at the Interchange Point.

In consideration of the rights and obligations hereunder, Lessor agrees that it shall not claim Car Hire payments which accrue to the Equipment while moving over railroad lines owned by UP during the period this Agreement remains in effect.

Section 4. MAINTENANCE; SUPPLIES.

The Lessee shall, at Lessee's own cost and expense, during the period the Equipment is in the Lessee's possession, make all repairs to the Equipment and maintain said Equipment in a condition suitable for interchange in accordance with the Interchange Rules of the Association of American Railroad (AAR Rules); and furnish all fuel oil, lubricants and supplies necessary for the proper operation of the Equipment. Lessee shall not be permitted to make any modifications or additions to the Equipment without the prior written consent of Lessor.

Section 5. BILLS.

The Lessor shall render to the Lessee, at the close of the term hereof, a bill for the rental of the Equipment and for any costs incurred by the Lessor in connection with the Equipment for which the Lessee is responsible hereunder, and the Lessee shall pay such bill to the Lessor promptly after receipt thereof.

Section 6. LOSS OF OR DAMAGE TO EQUIPMENT.

The Lessee shall be responsible for the Equipment while in the Lessee's possession, and the Lessee shall indemnify and hold harmless the Lessor against and from all damage, loss, costs and expenses of whatsoever nature resulting from damage to or loss or destruction of the Equipment while in the possession of the Lessee.

Equipment which is determined to be loss, destroyed or damaged beyond repair in accordance with Rule 107 of the AAR Field Manual of the Interchange Rule and Rule 7 of the AAR Code of Car Hire Rules and Interpretations - Freight, and any other applicable AAR rule shall be paid for by Lessee promptly following the date of such loss, destruction or damage. All such payment shall be determined by said rules.

The Equipment leased hereunder shall be considered to be in the possession of the Lessee from the time that it is delivered to the Lessee at the Interchange Point and such possession shall continue, subject to the provisions hereof, until the Lessee shall notify the Lessor of the release of the Equipment by the Lessee; and shall have returned the Equipment to the Interchange Point.

Upon making any payment for destroyed or lost Equipment, rentals of such units shall cease as of the date of such payment, the term of this Lease as to such units shall terminate and title to and rights in such units shall thereupon vest in the Lessee.

Section 7. INDEMNITY.

The Lessee shall indemnify and hold harmless the Lessor, its officers, agents and employees, against and from any and all loss, liability, damages, claims, costs and expenses whatsoever arising from or growing out of injury to or death of any person or persons whomsoever, or loss or destruction of or damage to property whatsoever, when such injury, death, loss, destruction or damage occurs because of or in connection with or incident to the use of the Lessee of the Equipment leased hereunder, whether for the purpose specified herein or for any other purpose, or from any defect therein, whether apparent or concealed, regardless of any negligence or alleged negligence, active, passive or otherwise of Lessor, employees or agents.

Section 8. PRESERVATION OF MARKINGS.

The Lessee shall carefully preserve the owner's markings on the Equipment leased hereunder, and shall maintain the identity thereof.

Section 9. NO GUARANTY OF UNINTERRUPTED USE OR SUITABILITY OF EQUIPMENT.

The Lessor does not guarantee uninterrupted operation of the Equipment or the suitability of the Equipment

for the purpose for which leased to the Lessee, and shall not be liable to the Lessee for any delays or loss resulting from failure of the Equipment during the term hereof.

THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, AS TO THE FITNESS, DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE.

Section 10. TERMINATION ON BREACH.

In the event the Lessee defaults in the performance and observance of any of the covenants and conditions to be performed and observed by the Lessee hereunder, the Lessor may, at its option, forthwith upon the happening of such default, terminate this Lease and repossess itself of the Equipment. A waiver by the Lessor of the breach by the Lessee of any covenant or condition of this Lease shall not impair the right of the Lessor to avail itself of any subsequent breach thereof.

Section 11. RETURN OF EQUIPMENT; REPAIRS.

Upon termination of this Lease, the Lessee shall redeliver said Equipment to the Lessor at said Interchange Point in a condition suitable for interchange in accordance with the AAR Rules.

Upon return of the Equipment to the Lessor, the Lessee shall, promptly upon receipt of bill therefor, reimburse the Lessor for the cost of any repairs to the Equipment resulting from the possession and/or use thereof by the Lessee or from any cause whatsoever growing out of the Lessee's possession and/or use thereof (ordinary wear and tear excepted), and the cost of any and all cleaning, painting and/or conditioning of the Equipment as will be necessary to fit the Equipment for reuse in the general service of the Lessor.

Section 12. DEFAULT.

If, during the continuance of this Lease, one or more of the following events (herein sometimes called events of default) shall occur,

A. default shall be made in the payment of any part of the rental provided in Section 2 hereof and such default shall continue for 30 days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the units, or any thereof, and shall fail or refuse to cause such assignment or transfer to be cancelled by agreement of all parties having any interest herein and to recover possession of such units within

30 days after written notice from the Lessor to the Lessee demanding such cancellation and recovery of possession;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding the same to be remedied;

then, in any such case, the Lessor, at its option, may

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all right of the Lessee in or to the units, or as to the use thereof, shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided.

The failure of the Lessor to exercise the rights granted it hereunder upon any occurrences of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

Section 13. SUBLETTING AND ASSIGNMENT PROHIBITED.

The Lessee agrees not to let or sublet the Equipment, in whole or in part, or to assign this Lease without the consent in writing of the Lessor, and it is agreed that any transfer or assignment of this Lease, whether voluntary, by operation of law, or otherwise, without such consent in writing shall be absolutely void and shall, at the option of the Lessor, terminate this Lease.

Section 14. SUCCESSORS AND ASSIGNS.

Subject to the provisions of Section 13 hereof, this Lease shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have caused

this Lease to be executed in duplicate as of the date first herein written.

Witness:

SOUTHERN PACIFIC TRANSPORTATION
COMPANY,

By W E Fowler
Title: Assistant to Manager, Contract Dept.

Witness:

UNION PACIFIC RAILROAD COMPANY,

By A A Holdorf
Title: Vice President

EXHIBIT A

RECITALS:

Equipment Leased: 29 serviceable flatcars of SP
series 595000-595339

51 serviceable gondolas of SP.
series 323000-323089

SECTION 1:

Interchange Point: Nearest UP-SP interchange point to
the location of the car when
located

Expiration Date: September 30, 1983

Purpose: For exclusive use in coiled steel
and scrap service between Geneva,
Utah and Pittsburg, CA.

SECTION 2:

Rental Rate: For the 29 flatcars --
\$600 per car, per month

For the 51 gondolas --
\$1,000 per car, per month